

Modernizing Maryland's Certificate of Need Program

May 17, 2018



The MARYLAND
HEALTH CARE COMMISSION

Modernizing CON Regulation – Charge to Commission

Final Report to General Assembly Committee chairs due in December, 2018

1. Examine major policy issues -CON regulation should reflect dynamic & evolving health care delivery
2. Review approaches other states use to determine appropriate capacity
3. Recommend revisions to CON statute
4. Recommend revisions to State Health Plan (SHP) regulations that:
 - Create incentives to reduce unnecessary utilization
 - Eliminate, consolidate or revise individual chapters of SHP
 - Develop criteria that determine service need in the context of Maryland's All-Payer Model
 - Improve clarity and appropriateness - reduce ambiguity

Modernizing CON Regulation

- 5. Consider what flexibility is needed to streamline CON project review process**
- 6. Identify areas of regulatory duplication in consultation with HSCRC & MDH**

Modernizing CON Regulation - Process

- **Phase One of study – Identify problems that need to be addressed in modernizing CON regulation. Phase Two of study will focus on ideas for addressing identified problems & developing recommendations for change & implementing change**
- **Solicit comments from regulated facilities & other stakeholders**
- **Convene stakeholder task force to consider comments, provide their own perspectives, discuss identified problems and issues, & advise on problems to be addressed**
- **Prepare interim report to set agenda for recommendations on modernizing CON regulation in final study report**

Modernizing CON Regulation – Common Themes

- **Most regulated facilities see a need for CON regulation in some form – more support for keeping CON than for eliminating CON regulation**
- **Substantive discussion by Task Force of need for current scope of CON and appropriateness of current regulatory process for some types of project**
- **Literature reviewed does not provide strong support for CON regulation as effective in controlling cost or improving quality**
- **CON regulation does shape health care system (e.g. in Maryland – ambulatory surgery, home health, hospice, lower per capita numbers of facilities & levels of capacity)**

Modernizing CON Regulation – Common Themes

- **Supporters see benefit of CON regulation in reducing overcapacity, facilitating more equitable access to care & more appropriate care**
- **Some supporters also see limits on growth & new market entry as beneficial in protecting expensive investments in facilities, reducing opportunities for fraud & the potential of overwhelming the oversight capacity of licensing & certification agencies, & keeping labor shortages from becoming more acute**
- **CON regulation imposes a significant direct compliance cost on regulated facilities – Review process is complex & often involves expensive legal & other expenses**
- **CON regulation limits competition that may increase costs & may limit new competitors with innovative approaches for reshaping care delivery**

Modernizing CON Regulation – Common Themes

- **CON regulation encourages “silo” perspective on the appropriate role of particular types of facility at a time when more flexibility may be needed to encourage facilities to break out from their limited traditional roles & provide different types of service to maximize care management/coordination & reduce cost**
- **Role of CON regulation as a tool for quality improvement is limited & quality improvement objectives may be better addressed with more appropriate tools**
- **CON regulation is the primary way for MHCC to implement its objectives for health care facility services – It should be reformed to better focus on achievement of this purpose**

Modernizing CON Regulation – Key Problems

- **Scope of CON regulation is outdated**
- **Review processes for handling different types of project review are underdeveloped – not all projects need the review process currently imposed**
- **State Health Plan regulations are, in some cases, outdated & overly complex – need to be better aligned with evolving All Payer Model regulating total cost of care**
- **The average period of time needed to review & act on CON applications is too long – period for completeness review and developing recommendations is often excessive**
- **Information requirements imposed by CON regulation are excessive/duplicative**

Modernizing CON Regulation – Key Problems

- **Performance requirements for approved projects are outdated and inflexible**
- **Capability to obtain broader community perspective on projects is underdeveloped**

Modernizing CON Regulation – Phase Two of the Study

- **Reconstitute Task Force – consider mix of stakeholders & need for other perspectives – develop guiding principles to frame objectives for reform**
- **Solicit specific & detailed ideas from stakeholders to address the problems & issues identified in Phase One**
- **Develop TF meeting agendas built around key areas of reform suggested by problem identification**

Scope of regulation

Reforming the project review process – imposing enforceable time limits

Fitting review processes to the project under review

Rethinking State Health Plan regulations – simplification & better prioritizing issues to be considered

Reforming the post-approval process – more flexible performance requirements & rethinking what changes need Commission approval

Modernizing CON Regulation – Phase Two of the Study

- **Develop consensus, to the extent possible, on law & regulatory changes that are practical & best address the identified problems**
- **Develop a final study report (December 1) with recommendations to the Committee chairs**